

Relying on 35 U.S.C. §112, second paragraph, the Examiner has rejected claims although 23 and 26 are being indefinite. Specifically, the Examiner objects to the terminology "means for retaining...in a vagina" for not defining what is retained. The language suggested by the Examiner has been adopted by the applicant to recite "...said closed end of said flexible, thin-walled tube within a vagina...". This rejection should be withdrawn.

Relying on 35 U.S.C. §103, the Examiner has rejected claims 21, 22, and 26 as being unpatentable over Graham in view of Dyck et al. The applicant respectfully traverses this rejection.

The Examiner relies upon Graham primarily for its "element 1" which is a band or "retaining means". This band in the Graham device is located approximately equidistant between the open and closed end of the tube. The ring is placed in the center of the tube in order to form the "bag-like extension 3" at the closed end of the tube. The bag-like extension 3 of the Graham "animal breeder bag" is critical to the device because the bag-like extension 3 is the pouch or bag within which animal semen is collected.

The band or element 1 of the Graham device does not provide a means by which the closed end of the tube is held against the uterus or cervix of the vagina in a manner similar to a diaphragm. If the band of the Graham device did hold the end of the tube against the cervix, the function of the Graham animal breeder bag would be defeated.

The Graham device does not have an outer ring that extends the circumference of the open end of the tube to form a cone-shaped portion. The ring depicted by element 8 of the Graham patent provides minimal protection over the vulva to prevent the spread of infectious matter between animals during intercourse.

The applicant has amended his independent claims to recite that the means for retaining the closed end of the tube in the vagina is "juxtaposed to the cervix." The placement of the means

for retaining the closed end of the tube at or near the uterus or cervix provides the applicant's device with the unexpected result that the penis, during coitus, moves against the internal wall of the tube. If the closed end of the tube is not held firmly in place near the cervix, as is taught by the Graham patent, the loose portion of the tube would "ride" or move with the penis. Such a structure diminishes the sensation of friction against the glans penis. The increased sensation allowed during coitus, such as that provided by the structure claimed by the applicant, encourages the use of the product and, thereby, contributes to a hygienic habit that can decrease the spread of sexually transmitted diseases.

Support for the applicant's amendments and arguments is as follows. The importance of a collar-shaped opening to the device is discussed on page 7 of the specification between lines 9 and 20. Support for the retention of the closed end of the tube at or near the uterus or cervix is found on page 14 of the specification between lines 8 and 18. The description of the unexpected results that are obtained by the applicant's claimed structure is described from page 10 of the specification at line 16 to page 11 at line 14.

This rejection should be withdrawn.

Relying on 35 U.S.C. §103, the Examiner has rejected claims 21, 22, and 26 as being unpatentable over Hollmann in view of Dyck et al. and, optionally, Graham. The applicant respectfully traverses this rejection.

The Hollmann patent discloses a condom having an outer ring that extends the circumference of the open end of the tube to form a conical shape. This device is apparently form fitting to the male and has no means for retaining the closed end of the tube within the vagina. Consequently, the sensation produced during coitus is diminished as discussed above.

The cited combination may teach one having ordinary skill in the art any structure that retains the closed end of the tube in

the vagina near the cervix. The addition of the ring structure of the Graham device to the Hollmann condom does not disclose the applicant's claimed structure nor the unexpected results of improved sensation that are derived from the applicant's claimed structure. For these reasons, the Examiner's citations do not make the applicant's claims obvious and this rejection should be withdrawn.

Relying on 35 U.S.C. §101, the Examiner has rejected claim 23 as claiming the same invention as that of claim 2 of the prior U.S. patent number 4,735,621. The applicant has amended claim 23 to recite a means for retaining that is "connected to said flexible, thin-walled tube". Support for this amendment is found on page 14 of the specification between lines 8 and 18. This rejection is now moot.

Relying on the judicially created doctrine of obviousness type double patenting, the Examiner has rejected claims 21, 22, and 26 as being unpatentable over the prior invention as set forth in claims 1 through 3 of U.S. patent number 4,735,621. The applicant respectfully traverses this rejection.

The applicant's claims, as now amended, recite a "means for retaining" that the closed end of the tube that covers the cervix of the user. This "means for retaining" is not made obvious by the removable second ring of the prior patent. The removable ring of the prior does not contemplate other mechanical means for retaining the tube. This rejection should be withdrawn.